UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES

DYNCORP		
and	**Cases**	**9–CA–37324**
		9–CA–37635
GRANT TURNER, An Individual		**9–CA–38049**
and		**9–CA–37486**
		9–RC–17352
AMERICAN POSTAL WORKERS UNION, LOCAL 164, AFL-CIO		
and		**9–CA–37744**
CARL D. MOORE, An Individual		
and		**9–CA–38053**
ROBERT HONNERLAW, An Individual		

Patricia Rossner Fry, Esq.,
Cincinnati, Ohio, for the General Counsel.
Alice J. Neeley and Michael W. Hawkins, Esqs. (Dinsmore & Shohl LLP),
Cincinnati, Ohio, for the Respondent.
Peter J. Leff, Esq. (O'Donnell, Schwartz & Anderson, P.C.),
Washington, D.C., for the Union.

DECISION[1]

I. Statement of the Case

1. JERRY M. HERMELE, U.S. Administrative Law Judge. On March 8, 2000, the employees of the Respondent, DynCorp, voted 114 to 94 against being represented by the American Postal

[1] Upon any publication of this Decision by the National Labor Relations Board, unauthorized changes may have been made by the Board's Executive Secretary to the original decision of the Presiding Judge.

Workers Union, Local 164, AFL-CIO (the Union). Thereafter, in complaints issued on May 1, June 6, and August 14, 2000, and January 4, 2001, the General Counsel alleges that the Respondent committed numerous violations of Section 8(a)(1), (3) and (4) of the National Labor Relations Act, before and after the election. As for the election itself, the Union filed objections thereto, which were consolidated into the instant complaints. In various answers filed in 2000 and 2001, the Respondent has consistently denied any wrongdoing.

2. So a trial was held on March 12-15, 2001, in Cincinnati, Ohio, during which the General Counsel presented 19 witnesses, the Union presented one witness and the Respondent presented 13 witnesses. Briefs were then filed by the General Counsel on April 17, the Respondent on April 19, and the Union on April 20.

II. Findings of Fact

3. DynCorp, based in Reston, Virginia, is a diversified government contractor with six sites in the nation devoted to the United States Postal Service (USPS). At these sites, one of which is in West Chester, Ohio, just north of Cincinnati, USPS equipment such as mail bags, containers, and transport equipment is inspected and repaired. DynCorp began building the West Chester facility in October 1998 and employees were hired beginning in April 1999, with production starting in May 1999. Annually, the Company performs services at the West Chester facility exceeding $50,000 for its sole customer, the USPS (G.C. Ex. 1(uu), (ww)); Tr. 18-20, 42-43, 50). At the plant's peak operation in early 2000, there were three shifts operating seven days a week with 300 or so employees. By early 2001, however, operations decreased to two shifts with about 200 employees (Tr. 33-35, 47).

4. Duncan Dawkins has been the West Chester plant manager since the opening thereof (Tr. 18). At the outset, employees were given a handbook setting forth the Company's employment policies, including the following:

> DISCIPLINARY WARNINGS
>
> Whenever an employee's breach of work rules, misconduct, poor performance or other unacceptable conduct comes to the attention of DYNCORP, the employee may receive a disciplinary warning. Such a warning is intended to make the employee aware of the seriousness of the problem and the need for immediate corrective action.

All warnings will be delivered privately in both oral and written form. The employee will be asked to sign the written warning and will be given a copy if requested. In addition, a copy of the written warning will be placed in the employee's personnel file.

DYNCORP reserves the right to take other disciplinary action deemed appropriate under the circumstances, Including demotion, suspension or termination of employment in lieu of a warning.

If an employee believes a warning is not justified, the employee is entitled and encouraged to freely discuss the situation with his or her supervisor. If the matter cannot be resolved through such discussion, or if the employee believes that such a discussion would be unproductive, the employee may make a written report to the Plant Manager or Human Resources Representative and request that the Plant Manager or Human Resources Representative review the warning and investigate all relevant circumstances.

The DYNCORP Cincinnati division's disciplinary policy is as follows:

(1) Oral Warning (written for documentation purposes)

(2) Written Warning

(3) Final Written Warning with 3 day suspension

(4) Termination

(G.C. Ex. 2). Employees hired after the plant's opening, however, did not receive this handbook (Tr. 21-23). But DynCorp also had written "Standards and Conditions of Employment," which provided "a list of conditions under which disciplinary action toward, or discharge of, an employee may occur." One of those conditions was "fraud or dishonesty," set forth as follows:

> Misusing or abusing Company policy such as: excused absences, leaves of absence; falsifying time sheets; failing to give complete information for personnel and/or security records; making false statements, either oral or written, about the Company, other employees, supervisors, yourself, or work situations.

(G.C. Ex. 4). Employees Grant Turner and Robert Honnerlaw received this information in 1999 (R. Exs. 2, 22). The Company also issued, in December 1999, a memorandum regarding disciplinary actions. Therein, three reasons were listed to warrant an employee's discharge: continued unsatisfactory performance; policy violations and gross misconduct. Also, examples of policy violations included "timecharging, harassment, insubordination, theft, etc." (G.C. Ex. 3).

5. In October 1999 two employees in the container repair department, Grant Turner and Danny Hollon, began an effort to organize the plant's employees for the Union (Tr. 275-76, 325). To this end, in December 1999 Turner handed out, and posted on one of the plant bulletin boards, located in the cafeteria, a "Notice" seeking "a list of interested parties" for the Union. Turner signed the Notice (G.C. Ex. 5; Tr. 203). Employees had previously used the Company's bulletin boards to post personal messages such as items for sale and thank you cards (G.C. Ex. 11). Though Dawkins maintained that supervisors told employees not to post items, no employee was ever disciplined for posting anything on a bulletin board. Dawkins learned of the union notice and asked Turner if he posted it. Dawkins then told him that the bulletin boards were for company use only and that he would be disciplined if he posted something like this again. And shortly after this conversation, management put a sign on the bulletin boards stating "For Dyncorp Business Use Only" (Tr. 38-40, 202, 326-31, 416-17).

6. In early January 2000, employees began passing out prounion buttons and distributing literature (G.C. Exs. 14-15; Tr. 290, 333-34). On January 24, the Regional Director for Region 9 sent Dawkins a letter notifying him that a petition, seeking an election pursuant to Section 9(c) of the Act, had been filed that same day (G.C. Ex. 1(k); R. Ex. 8). On February 3, the election was scheduled for March 8 (G.C. Ex. 1(k)). Shortly thereafter, Dawkins contacted company headquarters in Virginia, who sent someone to West Chester to train the supervisors about the dos and don'ts regarding their interaction with employees during a union election campaign (Tr. 797).

7. The nucleus of the prounion movement was the second shift employees in the container repair department (Tr. 41-42, 334-35). These employees were separated by a wall from the warehouse department employees. A walkway existed, with a railing, on the south side of the wall visible to the warehouse department. The processing employees, however, were located on the same, or north, side of the wall as the container repair employees (R. Ex. 15). Supervisor Wade Moore often told

employees to walk on the south side enroute to the cafeteria so as not to impede production or cause safety problems in the processing area (Tr. 556, 564-65, 613-14). In this regard, Lawrence so instructed Moore in January 2000 when he noticed employees on their way to the cafeteria impeding production by talking to employees who were working (Tr. 694-95). Moreover, in a November 24, 1999 memorandum to all employees, Dawkins stated that "[a]ll. . . employees should . . . proceed through the building in the aisleway on the South side of the demising wall" on their way into or out of the plant from the parking lot (R. Ex. 14; Tr. 829). According to Turner, the day after the union buttons appeared at work, container repair supervisor Wade Moore told Turner to walk along the south side of the wall not visible to the processing employees, on their way to the cafeteria. So, Turner received a written "Memo for the Record" (G.C. Ex. 18; Tr. 336, 569; 599). This was the first time Moore issued such a discipline (Tr. 618-20). Employees Danny Hollon, Samantha Bishop and Chad Williamson agreed that management changed the route to the cafeteria after the union effort began. According to Williamson, this was done to prevent the prounion container repair employees from talking to other processing employees on the way to the cafeteria (Tr. 206, 232-35, 276-77). Moreover, Williamson testified that after January 2000 the container repair employees were further isolated by having their break times changed, which used to coincide with the processing employees (Tr. 233-34). But supervisor Dale Lawrence maintained that the different departments always broke at different times (Tr. 697). Further, Tracey Coulter, who became a supervisor in June 2000, testified that container repair and processing employees had different break times since at least October 1999 when she started work (Tr. 461, 470, 494-97) And Moore, who worked at the plant since its opening in early 1999, testified that this staggered policy was always in effect at the plant, including before the union effort began.

8. The election was scheduled for Wednesday, March 8, 2000 (R. Ex. 25). In the weeks before the vote, both the Union and the Company passed out campaign literature (G.C. Ex. 9; Tr. 14-15, 43). Company literature stated that:

> The union cannot guarantee employees anything. All that a union can do is sit down and negotiate with an employer. Under federal law, DynCorp is not obligated to agree to anything the union proposes. Although we would bargain in good faith, your current wages, benefits and hours would be negotiated along with everything else. You could wind up with more, less, or the same with a union than you already have.

(R. Ex. 24). According to Dawkins and Lawrence, they consistently told employees this same message throughout the campaign (Tr. 692-93, 864-65). Indeed, antiunion employee Teresa Jacques agreed that management said this (Tr. 661-64). And prounion employee Stacy Fields testified that Lawrence and Moore said that if the Union was elected employees' pay could drop and benefits, including the employee stock ownership plan (ESOP), could be lost but that pay and benefits could also go up or remain the same. In other words, everything would be subject to negotiation (Tr. 185, 187). However, employee Chad Williamson remembered management saying that jobs could be lost if the Union won (Tr. 232). Employee Danny Hollon also testified that Dawkins, Moore and Lawrence said "everything that we had right now would be out the door, that everything would have to be negotiated and [t]here was no guarantee that we would get anything back that we had already" (Tr. 283-86). According to employee Carl Moore, Dawkins said that the ESOP might be lost and that pay could go down to minimum wage (Tr. 432). Further, employee Johnna Stone testified that management assured employees that the USPS contract was good for another two years, though it was added that other unions had put other companies out of business. But she added that management said that employees would not lose benefits or salary (Tr. 629-31). According to employee Samantha Bishop, Dawkins said that if the Union came in, "we would lose our benefits." Also, a "corporate guy" said "they could lose the contract through the post office" (Tr. 200-03). Finally, according to employee Grant Turner, Supervisor Wade Moore said on February 15 that employees would lose the 30 cents an hour each had paid into the ESOP (G.C. Ex. 12; Tr. 338-41).

9. In February and early March, the West Chester plant was ablaze with prounion and "vote no" buttons worn by employees (Tr. 96, 664). Same employees, though, wore no buttons, including Linda Reynolds, who declined supervisor Tim Wolfe's offer to take a "vote no" button because she considered her position private (Tr. 103-04). According to employee Stacy Fields, who did wear a prounion button, Wolfe also asked "different people," how they would vote in the election and passed out buttons to employees (Tr. 171-72). On one occasion, Supervisor Dale Lawrence told Fields "you're missing your ornaments today." According to Fields Lawrence "just teased me" (Tr. 171-72, 684-85). Also, Lawrence approached employee John Groves with a "vote no" button in his hand one day. Groves took the button, whereupon Lawrence said "I didn't think you were gonna take it." Groves then wore the button that day, and that day only, so as not to offend Lawrence (Tr. 95, 112-15, 691).

Lawrence also asked employee Harold Godbey one day during the campaign where Godbey's "ornaments was." Lawrence then explained that he meant union buttons (Tr. 97). Also, employee Phillip Henderson was asked by Lawrence, who was not his direct supervisor, where his "metal[sic] of honors" were, and Lawrence later clarified that to mean union buttons. Lawrence further asked Henderson if he was on the union organizing committee and attended union meetings. Henderson said yes. Then, Lawrence told Henderson he was disappointed in his union activity (Tr. 290-92). One day later, Henderson asked supervisor Wade Moore for some help on the job, as he had on previous occasions. Moore denied Henderson's request for the first time, however, stating that Henderson must meet his production a few weeks before, quota first before receiving assistance, and that Henderson would be disciplined if he failed to meet his quota (Tr. 584-87). But Moore relented the next day and gave Henderson the requested help (Tr. 293-97). According to Lawrence, Wade first alerted him to problems with Henderson's production, a few weeks before, whereupon Lawrence instructed that Henderson's future request for help be denied (Tr. 686-88). Finally, Lawrence drove employee Todd Rossman to the hospital in early 2000. Rossman had worn no buttons and Lawrence did not know his stance on the Union. While passing the Backporch Restaurant and Bar, Lawrence asked if that was where the union meeting was held or remarked "Oh, there's the Back Porch Tavern. That's where they're holding union meetings. . . ." Lawrence had previously seen a prounion flyer mentioning that as the site of union meetings (Tr. 126-29, 679-82, 736-37).

10. The West Chester plant started operation in mid-1999 with two shifts. Twelve employees who so desired were transferred to first shift in June, July, September, and November 1999, plus one employee in January 2000 (R. Exs. 16-17; Tr. 833). Because of increased work, DynCorp created a third, overnight shift at the West Chester plant on February 14, 2000. Third shift offered fewer hours and no benefits. To fill those positions, volunteers from the first and second shifts were solicited. Thus, some first shift vacancies were created, which were generally considered more desirable assignments (R. Ex. 18; Tr. 79, 347, 838-39). Five employees were transferred to first shift on February 28 (Tr. 81). Management then asked second shift employees Samantha Bishop, Grant Turner and Carl Moore, among others, just before the election if they wanted to move to first shift (Tr. 208-12, 345-47, 432-33). And three other employees were transferred to first shift on March 13, one week after the election, followed by eight more on March 27 (Tr. 81).

11. From February to early March, management held numerous

meetings with assembled employees regarding the upcoming March 8 election. The last such meeting was held on either Monday, March 6 or Tuesday, March 7, during which Dawkins spoke from a prepared written text about "the upcoming union election. . . on March 8." Dawkins told the employees:

> In addition, as we have tried to explain over the past several weeks, the USPS can discriminate against us based on our union status. It is perfectly legal. And if you think about it, it just makes good business sense. Why would any customer or supplier put all of its eggs previously proven that they would like to see DynCorp and other private facilities like us out of business? It's like inviting the fox into the henhouse, and it just doesn't make good sense.
>
> Also ask yourself if you think that I now know the issues. You have done a great job of identifying areas that need to be changed. Example: Overtime, workflow issues, seniority issues, supervisory problems, policy issues.
>
> I am forbidden by law to tell you today that I am going to make changes. But I can assure that I recognize that there are changes need to be made. It would be foolish for me not to address these issues. In fact it would be quite probable that significant changes would be made long before a contract is ratified.

Dawkins testified that he spoke on March 6 to the assembled employees (G.C. Ex. 6, Tr. 43, 46). Dawkins told the plant supervisors that there could be no such speeches less than 24 hours before the election (Tr. 771). Supervisor Tracey Coulter testified that the date of the final antiunion meeting was March 6 (Tr. 463), as did second shift supervisor Wade Moore, whose responsibility it was to gather his staff for the meeting (Tr. 556-60). Employee Johnna Stone also remembered Dawkins' final speech as being on March 6, and she was aware of a rule prohibiting any such speeches less than 24 hours before the election (Tr. 623-24). Employees Kathleen Pope and Teresa Jacques likewise placed Dawkin's final speech on March 6 (Tr. 652-54, 661-63). However, according to openly prounion employees Donna Sams, Jennifer Vaught-Riley, Danny Hollon, Grant Turner and Carl Moore, Dawkins' speech was on March 7. Indeed, Sams, Hollon, and Moore all knew of the 24-hour rule. In fact, Sams was looking forward to working on March 7 without having to listen to any more antiunion speeches. Also, according to

Turner, Dawkins said that "tomorrow is a big day" during the speech (Tr. 159-61, 166-68, 281, 344-45, 430-31). DynCorp time records reveal that first shift employees spent 16.63 total hours in meetings on March 6 and that second shift employees spent 29.67 hours in meetings that day. Grant Turner spent 0.51 hours attending a meeting on March 6, from 2:59 p.m. to 3:20 p.m. As for March 7, first shift employees spent 11.83 total hours in meetings, second shift employees totaled 7.65 hours, and third shift totaled 6.43 hours (G.C. Ex. 20; R. Exs. 11-13). According to Dawkins, the March 6 totals are way above the normal meeting time associated with employees attending brief, routine meetings, which are usually held before the start of a shift (Tr. 818-23). Election Day was March 8 and the Union lost the vote, 94 to 114 (G.C. Ex. 1(k)).

12. Just after the election, on March 15, employee Grant Turner, the leading union adherent, received a written discipline from supervisor Wade Moore for being out of his assigned work area, in the container repair section, without safety glasses. Turner was also cited for stopping productivity in this section by talking to other employees (R. Ex. 4). Wade had warned Turner orally in February for not wearing his safety glasses in the container repair area (Tr. 350, 573-74, 599, 602). The Company's written policy required employees to wear safety glasses at all times in the container repair area (R. Ex. 5). And four or five employees have been disciplined for violating this policy, including Darrell Hall in November 2000 (G.C. Ex. 28; Tr. 903). Hall was also disciplined for not wearing safety boots in May 1999 (G.C. Ex. 28). Turner conceded his failure to wear safety glasses but explained that he was looking for eye glass cleaner at the time (Tr. 350-52). According to Moore, Turner refused to sign for receipt of the discipline and then ripped up his copy (Tr. 581). Turner, however, claimed that Moore ripped it up when Turner complained that the election was over and lingering bitterness should end. But Turner added that Moore reinstated the written discipline because Turner had filed charges against DynCorp on January 18, 2000 with the National Labor Relations Board alleging various violations of Section 8(a)(1) of the Act during the early stages of the union organizing campaign (G.C. Ex. 1(a); Tr. 353-55). Indeed, Turner testified that he told Lawrence in January 2000 that he had just filed charges against Lawrence and the Company (Tr. 959). Lawrence conceded that he decided to keep Turner's written discipline on file (Tr. 699-700). But he denied knowing about Turner's January 2000 charges until after the March 8, 2000 election (Tr. 710-13, 716). And while Dawkins maintained that he did not tell the supervisors that a charge had been filed, he conceded that he told supervisors that he needed to

investigate certain allegations (Tr. 843).

13. On June 16, 2000, openly prounion employee Carl Moore was working on number one mail bags when his supervisor, Rhonda Bleska, told him to switch to orange plastic bags. It was often easier for a supervisor to switch an employee to another product than to search for additional, original product for that employee to continue working on (Tr. 746-61). According to Moore, the number one bags were easier to do, he still had more of them to process, and he had never worked on orange plastic bags before (Tr. 438-39, 446) Because Moore had no secondary product that day, and was running low on his primary product, Supervisor Daniel Hobson also asked Moore to switch to the orange plastic three times and Moore refused three times, saying he would stay at his current post or go home (Tr. 746-48, 785). Moore thought he was being treated differently because employee Stacey Fields was asked to switch jobs also that day and, when she balked, management let her remain (Tr. 441-43). As for Fields, she asked Hobson if she could finish up one skid of work and Hobson agreed, whereupon Fields moved to the next job (R. Ex. 7; 174-75, 786). According to Fields, Moore still had some number one bags to finish and said he did not want to move to a low volume product (Tr. 176-78). With Moore still refusing to move, Hobson went to supervisor Lawrence, who suspended Moore after talking with Dawkins (Tr. 701-02, 785, 844). Supervisors Coulter and Lawrence acknowledged that employees prefer to work on products they like best but added that employees are moved to unfamiliar products only when they run out of work (Tr. 532, 725-27). According to Dawkins, Moore's refusal to switch was unprecedented (Tr. 847, 911). So, he suspended Moore pending approval of his termination by DynCorp headquarters (R. Ex. 19; Tr. 445, 450, 844-45). Moore then filed a charge with the National Labor Relations Board on June 19, and was set to testify in the scheduled June 28 trial in this case, which was then postponed on June 23 because of Moore's additional charge (G.C. Exs. 1(q), (t), (v); Tr. 447). Moore's termination became final on June 22 (G.C. Ex. 13).

14. On October 17 and 19, 2000, Grant Turner received two letters of reprimand for excessive absenteeism before October 9. But Dawkins rescinded the disciplines upon reviewing Turner's attendance records and determining that the disciplines were issued in error (R. Ex. 23; Tr. 378-83).

15. Employee's time and efficiency at the West Chester plant are tracked via an electronic "onsite information system," which is activated by an employee swiping his identification badge into a machine, and entering the proper labor code for the

type of job he will be doing. The system then records that type of job along with where the employee is doing the job and how much of it he is doing (Tr. 61-62, 134-35, 766). Also, employees had to enter a separate work code for nonwork events such as attending meetings (Tr. 465). Meeting time did not count against employees' efficiency (Tr. 560). Thus, after laboring in to a preshift meeting, which was usually held for a few minutes, employees would then labor in to their primary product for the day (Tr. 193). But employees were not supposed to labor in to "downtime" because all employees had a primary and secondary product to work on at all times (Tr. 136, 477-78, 723). All employees were instructed verbally on how to account for their time via the electronic system (Tr. 539).

16. All employees are required to meet production quotas, i.e., daily and weekly 100% efficiency (Tr. 137-38, 255). Employees are also encouraged to exceed the 100% level and, to this end, the Company started the "120 Club" in the summer of 2000. If an employee reaches 120% or 140% efficiency, he receives a restaurant gift certificate (Tr. 119, 300). Management would put employees' efficiencies on the bulletin board (Tr. 305, 359). To keep track of efficiencies, employees would fill out a placard with their identification number thereon to claim credit for the percentage of work they perform on a skid of product, and place the placard on the skid (Tr. 139, 259). Some employees would have lower efficiencies because they were low on product (Tr. 306). So, they would, on their own, but with a supervisor's okay, find more product or ask other employees to give up some of their product (Tr. 255-56, 512). Sometimes, though, an employee would give a different product to another employee who was not trained to work on that product (Tr. 486).

17. According to several employees, certain supervisors told them to "buddy up" or help out their co-employees for the good of the Company (Tr. 137, 164-66, 181, 399). Specifically, Supervisor Tim Wolfe told employees Linda Reynolds and Helen Guffey to help other employees if they had already met their quotas for the day. So, for a few minutes at the end of her shift, on a few occasions a week, Reynolds helped other employees and did not take credit for this limited work (Tr. 105-06, 674). But Guffey never gave away inspected product (Tr. 666-67). Wolfe likewise told employee Everlina Ragland to help another employee meet his quota, but not to labor in to a new work code to take credit for the work (Tr. 193-94). Wolfe also so instructed employee Mitzi Gunn (Tr. 300-03). Wolfe also told employee Donna Sams to "be a team player" and she did so by

sharing her finished product if it was the same product as the other employee was working on (Tr. 155-58). Similarly, since May 1999 employee Debra Patterson sometimes received help for about 30 minutes at the end of her shift and she claimed the credit (Tr. 150-51). But employee Jennifer Vaught-Riley sometimes claimed credit for the extra work she performed and sometimes did not (Tr. 166). Further, employee John Groves would simply bring product to another employee towards the end of a shift, as opposed to working on the product (Tr. 118, 122). And some supervisors would merely instruct employees who had finished their daily quota to do some type of busy work such as "pull[ing] up pallets" (Tr. 141), to "unload the belt" (Tr. 195), or "unload the line" (Tr. 246), without switching labor codes (Tr. 398-99). Also, employees working on product out of the same bin would usually claim credit for 50% each, because that approximate split was accurate over the long term. In this regard, supervisors would not verify the claimed percentages (Tr. 521, 523, 641, 644-45, 657, 665-66, 675, 703). Coulter conceded that it was proper for employees to share product out of the same bin or to give away work to another employee trained on that product for a few minutes at the end of a shift. But she denied knowing of any employee taking credit for work they did not do in order to boost their efficiency (Tr. 486-88). Finally, as a matter of practice, employees on Friday mornings would claim credit for an entire skid which was partially finished by second shift employees on Thursday evening, who would not return until Sunday. Then, on Sunday, second shift employees would take full credit for partially finished skids left on Friday afternoon. This practice of "stealing" was discontinued by management in 1999 (Tr. 148-49, 413-15, 718).

18. In late 1999, employee Debra Patterson talked with then-fellow employee Tracey Coulter about the possibility of Robert Honnerlaw earning a 120% efficiency. Coulter said Honnerlaw needed one more skid to meet this quota. So, Patterson said she was already at 140% and would help Honnerlaw, whereupon Coulter said "great." Patterson then finished up the skid for Honnerlaw and gave him the credit (Tr. 143-46). Coulter later informed Honnerlaw that he had reached 120%, whereupon Patterson came over and said "surprise." Coulter said "it's nice to have friends" (Tr. 308-09, 403-04, 491). But Coulter denied knowing that Honnerlaw received credit for product he did not inspect. Rather, she maintained that she only suggested that Patterson do a little less so that Honnerlaw would have more product (Tr. 489-90).

19. From October 9 to November 1, 2000, Turner's overall work efficiency was 76%, ranging from 43% to 94%. So, he received a written discipline on November 1 to improve by November 8 or face further discipline including termination. According to Turner, this low productivity was caused by his difficulty in obtaining product to work on (Tr. 369). But supervisor Coulter disagreed with Turner's contention. Turner then called Coulter a liar (R. Ex. 6; G.C. Ex. 17; Tr. 362, 480, 516-20, 769-70). The next day, Turner prepared and had distributed a newsletter alleging unfair labor practices by management, detailing the progress of the trial in this case which was postponed several times, and urging employees to elect the Union (G.C. Ex. 10; Tr. 453-55). Dawkins denied seeing the letter (Tr. 885). Employees Mitzi Gunn and Rob Honnerlaw talked about helping Turner improve his efficiency, and told Turner. Turner asked Honnerlaw if this was permitted. Thereafter, Gunn, Honnerlaw and Delores Johnson did some work and gave Turner 25% credit on the affixed placards (G.C. Ex. 7; Tr. 260-62, 310-12, 367, 406-09). Despite prodding from Honnerlaw to help Turner, employee Kathleen Pope warned Turner not to accept this work product (Tr. 649). With this assistance, Turner's efficiency jumped to 150% on November 2 and 113% on November 3. These numbers caught Coulter's eye because other records revealed that Turner was performing work on new product he was untrained on. So she talked about it with Dawkins (G.C. Exs. 16-17; Tr. 475-77, 545-46, 849).

20. On Friday, November 3, Dawkins first met with Mitzi Gunn, whose name appeared along with Turner's on one placard. Gunn told Dawkins that she gave away some of her finished product to Turner, in accordance with established practice condoned by the supervisors (Tr. 313-14). Johnson also confessed to Dawkins (Tr. 266), as did Honnerlaw (Tr. 410). But when Dawkins asked Turner whether other employees were giving him finished product, Turner lied, claiming that he simply made an error in recording his work product. Turner explained that he wanted to protect his fellow employees (Tr. 371-73). Dawkins then called in his supervisors (Tr. 850). He asked them all if they knew about the practice of sharing work, without naming any names, and all of them--including Coulter, Lawrence, and Stephen Mokrovich--responded no (Tr. 485, 706-07, 767-68, 851-52). Dawkins explained that this was the first widespread, serious misconduct at the plant (Tr. 77-78, 915-16). Indeed, this misconduct undermined the Company's production incentive policies (Tr. 852), and prevented the Company from determining the true employee who worked on a product, which was required information if the product required reinspection (Tr. 530), or

to trace which employee screwed up (Tr. 72-73). Accordingly, he fired Turner "sometime later on" after questioning him, and then fired Johnson, Gunn, and Honnerlaw on Tuesday, November 7 (Tr. 373-74). (Tr. 268, 316, 373-74, 418). Thereafter, remaining employees were told to stop sharing product (Tr. 108-09). Turner repeated the false explanation he gave to Dawkins in his affidavit to the National Labor Relations Board and to the Ohio Bureau of Unemployment Services (R. Ex. 1; Tr. 385-88). Turner explained that he "just panicked and I was on medication and I wasn't truthful" (Tr. 385-86).

21. Before November 2000, the Company had fired other employees for fraud (Tr. 65). In November 1999, employee Tyrone Gunn was fired for leaving early and falsifying his time sheet (G.C. Ex. 23). In March 2000, William Hautman was fired for falsifying production data into the Company's electronic system (G.C. Ex. 26). But in late 1999, Chad Williamson was only suspended for three days for claiming credit for work he did not actually do, but blaming someone else (Tr. 227-30). According to Lawrence and Dawkins, however, it was not proven then that Williamson was at fault or falsified any documents (Tr. 588-90, 859-61). Lastly, in July 1999 Stan Williams scanned seven placards into the electronic system but did not attach them to any stacks. The placards were instead found on the floor. William only received a written discipline (G.C. Ex. 25).

III. Analysis

22. The General Counsel's unfair labor practice allegations fall into two broad categories: Section 8(a)(1) violations perpetrated during the spring 2000 campaign, and Section 8(a)(3) and 8(a)(4) violations occurring after the March 2000 election. The Section 8(a)(1) allegations are as follows: (i)restriction of employee access to the Company’s bulletin boards; (ii) creating an impression of surveillance; (iii) restriction of employee movement in the plant; (iv) interrogations of employees regarding their union sympathies by three supervisors; (v) promising and threatening loss of benefits; and (vi) giving a campaign speech within twenty-four hours of the election. The post-election Section 8(a)(3) allegations concern the discipline of one employee and subsequent discharges of five employees because of their union activity; two of which discharges the General Counsel alleges also violated Section 8(a)(4) because these employees had previously filed charges with the Board. The Union's three following objections to the election results parallel the complaint allegations: (i) handing out of "Vote No" buttons by management; (ii) promises of better work hours to certain

employees; and (iii) threats of loss of benefits if a union was voted in (ESOP, pay cuts).

A. The Section 8(a)(1) Violations

1. Warning not to use bulletin boards for union material

23. In December 1999, employee Grant Turner posted a letter on the Respondent's bulletin board seeking "interested parties" for the Union. Plant Manager Duncan Dawkins promptly removed the literature because the material violated the Respondent's unwritten rule against nonwork and personal postings. Dawkins also questioned Turner about the letter and warned him not to post similar notices on the board, stating that the bulletin board was for company use only. The General Counsel contends the Respondent violated Section 8(a)(1) by disparately banning union material from the company's bulletin board. The Presiding Judge agrees.

24. Generally, an employee or union does not have a right to use an employer's bulletin boards for union activity. However, once the employer makes the bulletin boards available for nonwork related use, whether expressly or by practice, it may not discriminate against union material. See Honeywell, Inc., 262 NLRB 1402, (1982); Challenge Cook Brothers of Ohio, Inc., 153 NLRB 92 (1965), enf'd. 374 F.2d 147(6th Cir. 1967). What is more, an employer may not avail itself of a long-standing policy against posting, in order to preclude union-related material, if the employer has failed to enforce or object to postings in the past. See Allied Stores Corp., 308 NLRB 184, 185 (1992); Vincent Steak House, Inc., 216 NLRB 647 (1975). Indeed, if an employer does have a no-posting rule it is obligated to enforce the rule and ensure there is sufficient staff to police the bulleting boards. See Fairfax Hospital, 310 NLRB 299, 304 (1992) (citing Ramada Inn of Freemont, 221 NLRB 331 (1976)). Here, before the union campaign began, the evidence clearly reveals that the Respondent allowed employees to post personal notices on the cafeteria bulletin board for weeks at a time such as for-sale signs, announcements, and thank-you cards, notwithstanding a supposed long-standing no-posting policy. Moreover, management never disciplined any employee for violating this policy since the plant opened in May 1999. That suddenly changed, however, just after the initiation of the union campaign in late 1999, when Dawkins, who should have known better, placed a "For DynCorp Use Only" sign above the bulletin board, removed all personal notices along with the

union material, and warned Turner not to do it again. Therefore, the Respondent will be ordered to rescind the discriminatory no-posting rule.

2. Unlawful impression of surveillance

25. In early 2000, second-shift manager Dale Lawrence allegedly created an unlawful impression of surveillance when he asked, or at least commented to, employee Todd Rossman about the Union's meetings at the Back Porch Restaurant. According to Lawrence, he said "oh, there's the Back Porch Tavern. That's where they're having union meetings" when the two passed the restaurant upon returning to the plant from a hospital Lawrence had just driven Rossman to. Rossman testified that Lawrence gestured toward the restaurant and asked if that was the location of the union meetings. The Respondent asserts the question about the location of the union meeting was innocuous, and did not reasonably create an impression of surveillance because the union meetings were publicized at the plant. The Presiding Judge finds merit in Respondent's defense.

26. At the outset, it is concluded that Lawrence's far more detailed description of his remark to Rossman is accepted over Rissman's vague recollection thereof. Thus, Lawrence did not actually interrogate Rossman about this matter. While an employer creates an unlawful impression of surveillance when an employee would reasonably assume their union activities had been placed under surveillance, see Flexsteel Industries, Inc., 311 NLRB 257 (1993), Lawrence's remark about the union meetings did not violate the Act. Indeed, Lawrence did not suggest that he knew which employees attended the meetings, the substance of any discussion at the meetings, or even that Rossman attended the meetings. See Clark Equipment Co., 278 NLRB 498, 503 (1986). Further, the Union publicized its meetings at the Respondent's plant and Lawrence credibly testified that he saw a flyer at the plant stating that the Union held its meetings at the Back Porch Restaurant. Thus, Lawrence's remark would not reasonably create upon Rossman the impression that Lawrence was spying on the Union because the location of the union meetings was publicized. Compare Ichikoh Manufacturing, 312 NLRB 1022, 1023 (1993) (supervisor's statement about covert union meetings would reasonably lead employees to assume that their union activities had been placed under surveillance.) Accordingly, paragraph 5(a)(1) of the General Counsel's Complaint will be dismissed.

3. Restriction of Movement in the Plant

27. A "demising wall" divides the Respondent's plant. The

north side of the wall houses the processing department at one end and the container repair department at the other. The warehouse is located on the south side of the wall. A walkway runs along the south side of the wall to the lunchroom which employees are required to use when making their way to and from the lunchroom while on break. The General Counsel alleges that in early 2000 the Respondent forced employees in the heavily pro-union container repair department to use the south-side walkway in order to isolate them from employees in the processing department. In defense, the Respondent asserts that the rule, in effect since the beginning of operations in early 1999, only attempted to maximize safety and efficiency in the plant.

28. Clearly, the isolation of employees in response to union activity is unlawful. See Standard Products Co., 281 NLRB 141, 142 (1986), enfd. in part 824 F.2d 291 (4th Cir. 1987). But the Respondent's policy at the West Chester plant, requiring employees to walk on the warehouse, or south, side of the demising wall, was a long-standing rule. First, on November 24, 1999, before the beginning of open union activity at the plant, the Respondent sent a memo to all employees stating that they should use the walkway when arriving at and leaving the plant. Although the General Counsel correctly notes that this memo did not specifically refer to breaks, it seems logical that the rule also applied during work hours because the walkway leads directly to the lunchroom from the warehouse. Moreover, the Respondent's explanation regarding use of the walkway to minimize disruption of the rocessing department's work makes sense because that department lies in the path of container repair employees walking to the lunchroom. Second Supervisor Wade Moore credibly testified that since the plant's opening in May 1999 he often told employees to use the walkway when walking from the containing repair department to the lunchroom, so as not to impede production in the processing department and to ensure the safety of the employees.

29. As for the testimony of employees Danny Hollen, Samantha Bishop, Chad Williamson, and Grant Turner that management changed the route to the breakroom only after the union effort began, the Presiding Judge finds their recollection faulty. First, Turner is not a credible witness. He admittedly lied to the Respondent about sharing product with other employees, and he also lied to the Board and the state unemployment office concerning the same issue. Second, Williamson also testified that management further isolated employees by staggering break times after the onset of union activity; testimony clearly refuted by the credible testimony of

three supervisors—Lawrence, Coulter and Moore. Thus, Williamson's deficient memory on this related matter casts doubt on his ability to recall whether the route was changed after the campaign began. Third, Hollen's and Bishop's somewhat vague version was probably colored by their likely knowledge that Turner was disciplined for walking on the north side of the wall shortly after the union campaign began. Thus, the preponderance of the evidence is that the walkway rule was promulgated in 1999, before the union effort began.

30. In sum, the Presiding Judge finds that neither the purpose nor the effect of the walkway rule unreasonably restricted employees' ability to engage in union organizing activities. Also, in view of Moore's uncontradicted testimony that he often verbally warned employees to use the south side walkway, it cannot be concluded that the Respondent disparately enforced the rule, by issuing a very general reprimand to Turner (G.C. Ex 18), after the start of the union campaign.[2] Thus, paragraph 5(e) of the complaint will be dismissed.

4. Interrogations

31. The General Counsel next alleges that during the election campaign supervisors Dale Lawrence, Tim Wolfe, and Chris Fair interrogated employees concerning their union views. Specifically, employee Stacy Fields, an outspoken proponent of the Union, wore prounion buttons regularly. While at her work station, Lawrence stated, "you are missing your ornaments today." Lawrence's statement was neither coercive nor interrogative because Lawrence knew Fields' position, and Fields uninhibitedly displayed her support for the Union. And significantly, Fields testified the comment was in jest. Thus, this statement did not violate the Act. See Teksid Aluminum Foundry, 311 NLRB 711, 715-16 (1993). But Lawrence unlawfully interrogated openly prounion employee Phillip Henderson during the union campaign. On a day he had not donned his union button, Lawrence inquired where was his "metal of honors?" Lawrence then continued, asking if Henderson was on the organizing committee or attended union meetings. Henderson answered in the affirmative. Before the interrogation, Lawrence gave no assurances that there would be no reprisals for answering truthfully. The conversation then ended with an implied threat: Lawrence stated he was disappointed with Henderson's union activity. Clearly, Lawrence's statements

[2] This discipline is not specifically alleged as a violation of the Act in the General Counsel's complaint.

violated Section 8(a)(1) because, taking into account the totality of the circumstances, they reasonably tended to restrain and interfere with Henderson's exercise of his Section 7 rights. See Blue Flash Express, 109 NLRB 591, 593 (1954). Moreover, after the conversation Lawrence instructed Wade Moore, Henderson's immediate supervisor, not to give help to Henderson until his production levels increased. Prior to that time Henderson always received assistance when he asked. Regardless of whether this particular decision was based on a legitimate business reason, the timing of management's new policy toward Henderson strongly suggests that it was directly correlated to Henderson's union activity and Lawrence's preceding unlawful interrogation. Indeed, Lawrence conceded that he knew about Henderson's drop in production for a few weeks and yet did nothing about it until the union interrogation. Nor is Lawrence's misconduct vitiated by Moore's decision not to enforce Lawrence's edict. Therefore, management's threat of more onerous working conditions for Henderson likewise violated Section 8(a)(1). Next Lawrence also unlawfully interrogated employee Harold Godbey, who, unlike Fields and Henderson, was not an active union supporter, asking him where his "ornaments" were. This type of interrogation by an employer of an employee whose union sentiments are not on open display is an impermissible intrusion into the employee's union sentiments. See Twin City Concrete Inc., 317 NLRB 1313, 1317-1318 (1995). Finally, Lawrence approached employee John Groves, while he was at his work station, with a "vote no" button in his hand. While it is unclear as to whether Lawrence innocently approached Groves with the button or intentionally walked over so that that Groves would take it, Groves did take one of the two buttons Lawrence held in his palm. Lawrence then said "I didn't think you were gonna take it." Groves credibly testified he only took the button so he would not upset Lawrence, and wore the button only for that one day. Under all the circumstances, especially Lawrence's numerous other illegal interrogations regarding buttons, the Presiding Judge resolves this issue in the General Counsel's favor. See Rossmore House, 269 NLRB 1176 (1984). The plain fact is that Lawrence forced Groves to make a declaration of his support, regardless of the truthfulness thereof. See Chris & Pitts of Hollywood, Inc., 196 NLRB 866, fn. 2 (1972). Thus, Lawrence's misconduct again violated Section 8(a)(1), and the Union's objection #2 will be sustained.

32. Turning to manager Tim Wolfe, he approached employee Linda Reynolds while at her workstation and asked her if she wanted a "vote no" button, Reynolds had not worn campaign buttons at work or otherwise disclosed her position on the Union. She declined Wolfe's offer, explaining her vote was

private. Contrary to the Respondent's assertion, such an exchange constitutes unlawful interrogation under the Rossmore analysis. It is well-settled that when an employer requests an employee to wear an antiunion button, or makes available such buttons in a coercive fashion, such an act is tantamount to the interrogation of that employee because it requires him to make an open declaration of his support or opposition to the Union. So, this incident constituted another Section (a)(1) violation and likewise warrants sustaining union objection #2. See Kurz-Kash, Inc., 239 NLRB 1044, (1978). Compare Black Dot, Inc., 239 NLRB 929 (1978) (an employer may make antiunion buttons available in the cafeteria where there is no distribution by supervisors, and supervisors do not discuss the wearing of buttons with employees). Lastly, the General Counsel has failed to adduce any evidence regarding the allegation that Supervisor Chris Fair interrogated employees, Therefore, paragraph 5(h) of the complaint will be dismissed.

5. Benefits: Promises and Threats of Loss

34. The General Counsel and the Union allege that the Respondent threatened the employees with reduced wages and benefits during the election campaign. Specifically, it is alleged that Dawkin's and Supervisor Wade Moore threatened employees with reduced wages and loss of the Company's 30-cent per hour contribution toward the ESOP if the Union won the election. According to Turner, Moore stated on February 15 stated that the 30 cents per hour contribution would be lost; a statement confirmed by a transcript of a tape recording of this conversation made by Turner. Also, despite the incompleteness of this transcript, Moore never testified that he added anything to the contrary during this conversation. Nevertheless, the Presiding Judge concludes that Wade's statement did not violate the Act. Significantly, it has not been proven that anyone other than Wade and Moore attended this "meeting." Indeed, these two men are the only participants identified in the transcript of the conversation and Turner's trial testimony fails to establish the presence of anyone else at this February 15 encounter (Tr. 338-40). Moreover, a complete reading of the conversation's transcript reveals that Turner, with his tape recorder running, cunningly led Wade off message from management's official line that all matters would be subject to negotiation. Moreover, Moore's answers to Turner's repeated questions are nothing more than rambling, somewhat incoherent explanations about the Respondent's plans for the ESOP. In sum, this "best evidence that the General Counsel proffers about the Company's oral statements to employees during the election campaign about wages and benefits fails to prove this

allegation.

35. As for other unrecorded, oral statements made by management, it is likewise concluded that neither the General Counsel nor the Union have satisfied their burdens on this issue. At the outset, the Presiding Judge finds employees Chad Williamson, Danny Hollon, Carl Moore, and Samatha Bishop all to be credible witnesses. However, Williamsome could not identify which supervisor said that jobs could be lost if the Union won. As for the testimony of Hollon, Moore and Bishop regarding statements by Dawkins, Moore, and/or Lawrence that benefits would be lost or might be lost, it is far more likely that, in the face of all the evidence on this issue, these employees testified as to incomplete remarks they either heard or thought they heard from management, Indeed, Dawkins and Lawrence credibly testified that they consistently repeated the Company's written policy to employees when asked about what would happen to wages and benefits. Also, neutral employee Johnna Stone did not hear any threats about loss of salary or benefits, and pro-union employee Stacy Fields and antiunion employee Teresa Jacques both remembered the oral presentations matching the written policy. Thus, it is concluded that the preponderance of the evidence establishes that the Respondent did not illegally threaten to reduce wages and benefits.

36. Turning to the alleged illegal promises of benefits made by management during the campaign, the General Counsel and the Union point to offers to second shift employees, including Grant Turner, Carl Moore, and Samantha Bishop, shortly before the election, to switch to the more desirable first shift. While the timing of such a promise certainly raises an inference that the Respondent attempted to bribe employees, thus destroying the laboratory conditions of the March 8 election, the plain fact is that the first shift transfer plan was well-established for months leading up to the election. Specifically, approximately 13 employees were transferred in 1999 alone. Then, for legitimate business reasons unrelated to the pending union election, the Company created a third working shift on February 14, 2000, thus creating additional vacancies in the first shift in the midst of the election campaign. Indeed, five employees were so transferred on February 28; an event the General Counsel did not allege as an unfair labor practice and the Union did not lodge an objection to. And because the employees were already well aware of the possibilities regarding first shift transfers, the repetition of this announcement before March 8 did not violate the Act. Emery Worldwide, 309 NLRB 185, 186 (1992). Thus, the Union's objection on this matter will be overruled and the General

Counsel's allegation at paragraph 5(f) will be dismissed.

37. The second alleged pre-election promise concerns Duncan Dawkins final speech to the employees just before Election Day, March 8. Therein, the General Counsel alleges that Dawkins impliedly promised to remedy specific employee complaints by reading the following from a written text:

> Also ask yourself if you think that I now know the issues. You have done a great job of identifying areas that need be changed. Example: Overtime, workflow issues, seniority issues, supervisory problems, policy issues.
>
> I am forbidden by law to tell you today that I am going to make changes. But I can assure that I recognize that there are changes need to be made. It would be foolish for me not to address these issues. In fact it would be quite probable that significant changes would be made long before a contract is ratified.

38. It is true that an employer's sudden willingness to address promptly the complaints of employees during a union campaign is unlawful and inherently interferes with an employee's free choice in the election. See Gray Line of the Black Hills, NLRB 778, 791 (1996) (citing Medo Photo Supply Corp. v. NLRB, 321 U.S. 678, 686 (1944)). However, Dawkins' speech did not imply a promise to remedy grievances because the grievances Dawkins enumerated were extremely vague: overtime, work flow issues, seniority issues, supervisory problems, policy issues. See Bakersfield Memorial Hospital, 315 NLRB 596, 601 (1994); compare Pennsy Supply, 295 NLRB 324, 325 (1989) (supervisor's statements about health and retirement plans were not general and vague). In this regard, the General Counsel has failed to adduce any evidence regarding the existence of any of these problems at the West Chester plant, much less that any of these problems were debated during the election campaign. Thus, the General Counsel's allegation at paragraph 5(b)(ii) of the complaint will also be dismissed.

6. Allegation of Speech made within the 24 hours prior to the election

39. An employer and union are prohibited from making election speeches to massed employees on company time within 24 hours of the scheduled time for conducting the election.

Peerless Plywood Co., 107 NLRB 427, 429 (1953). The Peerless rule, however, does not prohibit an employer from distributing campaign literature, talking individually with employees, or answering unsolicited questions from the employees, as long as the words or actions of the employer are not coercive. See Andel Jewelry, 326 NLRB 507 (1998); Associated Milk Producers, 237 NLRB 879, (1978).

40. The General Counsel alleges that Duncan Dawkins made a speech to second shift workers on March 7, 2000, at 3 p.m., within 24 hours of the start of the election. But the preponderance of the record evidence shows otherwise, First, three supervisors including Wade Moore and three employees, two of whose union sympathies are unknown, credibly testified that Dawkins delivered the speech on March 6. Indeed, it was Moore's job to gather second shift workers for such a meeting. And one of those employees, Johnna Stone, whose union sympathy is unknown, was aware of the 24-hour rule, thus giving added significance to her fixing of the March 6 date. Second, the Respondent kept detailed records of the amount of time employees spend in meetings each day. On March 6, second shift employees aggregately spent nearly 30 hours in meetings, whereas on March 7, in all likelihoodthe day before the election, those same employees spent only seven and a half hours in meetings, which Dawkins explained was their average time spent in regular pre-shift meetings. Third, as for Turner's claim that Dawkins said "tomorrow is a big day," that statement is not contained in Dawkin's prepared text. And, as explained supra, Turner has not distinguished himself as a credible witness in this case. While four other credible pro-union witnesses fixed the speech as being delivered on March 7, these are references to informal meetings Dawkins may have conducted within the 24-hour period. Therefore, paragraph 5(b)(iii) of the complaint will be dismissed.

B. The Section 8(a)(3) Violations

1. Written discipline issued to Turner

41. Since the opening of the Company's West Chester plant in 1999, the Respondent has required all employees to wear safety glasses in the container repair area of the plant. After the election, on March 15, 2000, employee Grant Turner received a Personal Improvement Plan (PIP), or the Respondent's version of a written reprimand, for being out of his work area and for failure to wear safety glasses in container repair area. On the day before, Supervisor Wade Moore warned Turner not to come into the container repair division without safety glasses, and to

refrain from talking to other employees on the job. According to the General Counsel the Respondent disciplined Turner because of his role in the union effort, thus violating Section 8(a)(3). The Respondent, however, argues that the discipline was issued because of Turner's failure to follow standard procedure. To prove its allegation, the General Counsel must show by a preponderance of the evidence that the employee's protected Section 7 activity was a motivating factor in the Respondent's decision to discipline him. If so proven, the burden then shifts to the Respondent to show, also by a preponderance of the evidence, that its action was based on lawful reason(s), and would have occurred absent the protected activity. Wright Line, 251 NLRB 1083 (1980), enf.d 662 F.2d 899 (1st Cir. 1981), cert. denied, 455 U.S. 989 (1982); approved in Transportation Management Corp., 462 U.S. 393 (1983).

42. The Presiding Judge concludes that the General Counsel has met his initial burden. Specifically, the Respondent demonstrated union animus as evidenced by its 8(a)(1) violations concerning the banning of union literature from the Company bulletin board, and interrogations regarding antiunion and union buttons threat of onerous working conditions to one employee. However, it is also concluded that the Respondent has adequately rebutted the General Counsel's showing. The Company's policy was crystal clear: wear safety glasses in the container repair department. Turner failed to abide by the rule, and consequently received a verbal warning. The very next day, Turner again failed to wear his glasses, thus justifying a written discipline to ensure the safety of all employees. Moreover, the fact that Turner received the March 15, 2000 discipline just days after the unsuccessful union campaign does not undermine the justification of the discipline inasmuch as the Respondent had a clear, existing rule in place and had enforced another safety equipment rule against another employee previously. Finally, regarding the Section 8(a)(4) allegation, the Presiding Judge discredits Turner's testimony that Moore tore up the PIP after Turner explained his personal situation and said that it was time for vindictiveness and bitterness to end, and that Lawrence later reinstated the PIP. Rather, Moore's explanation that Turner ripped up his own copy of the reprimand is the more logical version of events. Indeed, when the PIP was ripped up by Turner, Lawrence already had a copy on file and there was never a cancellation of the discipline. Thus, the PIP was not subsequently reinstated by Dale Lawrence, as alleged by General Counsel, because of Turner's filing of a charge with the NLRB. Therefore, the General Counsel 8(a)(3) and 8(a)(4) allegations in paragraphs 6(a) and 6(g) of the complaint will be dismissed.

2. Suspension and Discharge of Carl Moore

43. Employee Carl Moore worked on canvas mail bags on June 16, 2000. A supervisor, Rhonda Bleska, asked him to switch products and work on orange plastic bags. Moore was proficient on the canvass bags, but had never worked with the orange bags. He refused to switch product. Bleska asked Supervisor Daniel Hobson for assistance. Hobson asked Moore three times to switch to the orange bags. Moore refused. Hobson then told Supervisor Dale Lawrence about the problem. After the next break, Lawrence called Moore and Hobson into his office where he asked Moore if he would switch products. Moore again refused. Lawrence then suspended Moore pending approval of his termination by company headquarters. Moore then filed a charge with the Board on June 19, and his termination became final on June 22.

44. The General Counsel alleges that the Respondent violated Sections 8(a)(3) and (a)(4) when it suspended and subsequently discharged Carl Moore because of his union adherence, and for filing the June 19 charge. But the Respondent counters that the disciplinary actions were based solely on Moore's insubordination. In the Presiding Judge's view, the Respondent is correct. Significantly, three supervisors asked Moore a total of five times to switch product, and each time he refused. The record evidence reveals that no employee had ever flatly refused to perform an assigned task. See Williamson Piggly Wiggly, Inc., 280 NLRB 1160, 1171 (1986), enfd. granted by 827 F.2d 1098 (6th Cir. 1987). In addition, the timing of this event was far removed from the March 2000 union campaign, lessening the likelihood that union animus was the motivating factor. Also, there was no disparate treatment of Moore that day. On the contrary, openly pro-union employee Stacy Fields was also asked to switch products, and she ultimately agreed. Finally, there is insufficient evidence to conclude that Moore's June 19 charge with the Board had anything to do with his termination. Rather, the die had already been cast for his termination on June 16. Therefore, paragraph 6(c) of the complaint will be dismissed.

3. Discharges of Turner, Honnerlaw. Johnson and Gunn

45. The Respondent required each employee to produce at a 100% level. On November 1, 2000, eight months after the election, the Respondent reprimanded Turner because his productions levels were on average only 76%, well below the standard set by the Company. He received PIP advising him to

increase his production or face disciplinary measures, including possible termination. On November 2, 2000, upon a routine check, Turner's supervisor, Tracy Coulter, noticed his production level had jumped to 150% and he was working on a product upon which he was not trained. After investigating the peculiar increase in productivity, management discovered on Friday, November 3, 2000, that Turner had accepted finished product from employees Robert Honnerlaw, Mitzi Gunn, and Delores Johnson in order to increase his own production level. Duncan Dawkins then questioned all four employees, and all but Turner admitted they engaged in the practice. Shortly thereafter, the Respondent discharged Turner for fraud. Likewise the Respondent fired the other three employees on Tuesday, November 7. According to the General Counsel and the Union, the Respondent continued its antiunion retaliation by discharging union leader Grant Turner and firing the three other employees. In defense of its action, the Respondent argues that these employees manipulated their work performance to the detriment of the Company, and so justifiably discharged them.

46. Again, as documented supra, it is concluded that the General Counsel met his initial Wright Line burden. Indeed, Turner was the most outspoken of all union supporters; during the campaign he distributed leaflets, signed union postings, and was generally visible as the union campaigner. In addition, the day before his discharge he distributed union material condemning management and calling for a new election. Nonetheless, the Presiding Judge concludes that the Respondent has once again rebutted the General Counsel's showing. First, the Respondent discharged the four employees for legitimate business reasons. See Pacific FM, Inc., 332 NLRB No. 67 (2000). Here, the Company had a strong interest in knowing which employees were producing and those which were not. In fact, there was a system in place to reward successful employees or, in the case of Turner, to discipline him because his production levels were too low. And when faced with the possibility of discipline, Turner did not attempt to increase his productivity, but instead embarked on a course of action to defraud the Respondent deliberately despite being warned by one other employee not to accept completed product from others. Further, the Respondent's policy made sense from a quality control standpoint because it allowed the Company to trace which employee worked on which product if the product needed reinspection. Second, there is no evidence that the Respondent seized on the product sharing incident as a pretext to get rid of Turner and the three others. Initially, it is significant that in October 2000 Turner erroneously received written disciplines for absenteeism, which the Respondent rescinded upon

learning of their mistake. Regarding the November 2000 incident, the preponderance of the evidence shows that the product sharing was not a regular or endorsed practice at the Respondent's facility. Dawkins credibly testified he was not aware of the practice. Nor should such knowledge be imputed to Dawkins because two supervisors condoned product sharing. The only time Tracey Coulter acknowledged and encouraged the practice of sharing product was in 1999, when she was an employee. And after she was promoted to supervisor, there is no evidence she continued to endorse the practice. As for rogue Supervisor Tim Wolfe, there is plenty of evidence that he encouraged the practice. But he was gone by sometime after the election and there is no evidence that other supervisors continued Wolfe's policy. Simply put, Dawkins, who made the decision to terminate the four (knowledge of ample employees, credibly testified he did not know about the sharing practice and there is insufficient basis for imputing such knowledge to him. Compare JMC Transport, Inc. v. NLRB, 776 F.2d 612, 619 (6th Cir. 1985) (Supervisor's direct culpability in employee's discharge is imputed to executive who fires employee); Springfield Air Center, 311 NLRB 1151 (1993) (knowledge of employee's protected, corrected activity imputed to management official who made decision to discharge employee).. Third, Turner knew such a practice to be fraudulent, based on employee Kathleen Pope's warning beforehand and Turner's ultimate lie when confronted by management on November 3. As for Johnson, Honnerlaw and Gunn, who were less culpable and more truthful with Dawkins, the Respondent still had the right to terminate them for fraud.

47. Finally, there is insufficient evidence that Turner's distribution of a union memo on November 2, 2000, was the catalyst for the discharges. Notably, Dawkins credibly testified he did not see the memo before November 7, and there is no substantial evidence to the contrary. Accordingly, it is concluded that the Respondent justifiably discharged employees Turner, Gunn, Honnerlaw, and Johnson. Therefore, paragraphs 6(d) and (e) of the complaint will be dismissed.

C. Summary

48. Typically, the remedy for violations of Section 8(a)(1) during the critical period is a new election, because such conduct interferes with exercise of free choice in the election. See Dal-Tech Optical Co., 137 NLRB 1782, 1786 (1962). The Board will depart from this policy when, analyzing "the number of violations, their severity, the extent to dissemination, the size of the unit, and other relevant

factors,: the violations are concluded to be de minimis. See Enola Super Thrift, 233 NLRB 409 1977).

Here, the Respondent committed two types 8(a)(1) violations, prohibiting posting of union material on its bulletin board, and interrogation of employees. The most egregious violation is the prohibition on posting. From the first day of the critical period, the Respondent severely limited the employees' right to disseminate information concerning the Union and the campaign. Such a violation fatally taints the election, and is especially consequential considering the small margin of victory, the Respondent garnered only 114 of the 208 votes cast, with 18 eligible voters not voting. As for the interrogation of the three employees, those violations simply reinforce the finding that the laboratory conditions were disturbed. Thus, the election results must be set aside, and a new election conducted.

IV. Conclusions of Law

1. The Respondent, Dyncorp, is an employer engaged in commerce within the meaning of Section 2 of the Act.

2. The Union, Local 164, American Postal Workers Union AFL-CIO, is a labor organization within the meaning of Section 2(5) of the Act.

3. The Respondent violated Section 8(a)(1) and (3) of the Act by interrogating employees concerning union buttons, as alleged in paragraphs 5(a)(ii), 5(a)(iv), and 5(d) of the General Counsel's complaint.

4. The Respondent violated Section 8(a)(1) and (3) of the Act by threatening reprisals, as alleged in paragraphs 5(a)(iii) and 5(c) of the General Counsel's complaint.

5. The Respondent violated Section 8(a)(1)and (3) of the Act by prohibiting the posting of union literature on Respondent's bulletin board, as alleged in paragraph 5(b)(i) of the General Counsel's complaint.

6. The Respondent violated Section 8(a)(1) and (3) of the Act by impliedly promising to remedy employee grievances if they rejected the union, as alleged in paragraph 5(b)(ii) of the General Counsel's complaint.

7. The Respondent violated Section 8(a)(1) and (3) of the Act by offering benefits to employees in the form of shift

changes as alleged in paragraph 5(f) of the General Counsel's complaint.

8. The General Counsel has failed to prove his allegations in paragraphs 5(a)(I), 5(b)(iii), 5(e), 5(g), 5(h), and 6(a)-(g).

9. The Union's three objections are sustained.

ORDER

Accordingly, **IT IS ORDERED** that the Respondent, Dyncorp Corporation, its officers, agents successors and assigns, shall:

1. Cease and desist from:

(a) Prohibiting employees from posting union literature or notices on its bulletin board located in the employee break room.

(b) Interrogating any employees about their union activities, membership, or sympathies.

(c). In any like or related manner, interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action:

(a) Remove the :For Dyncorp Use Only" sign from above the bulletin board in the employee lunch room.

(b) Post at its facility in West Chester, Ohio, copies of the attached notice marked "Appendix." Copies of the notice, on forms provided by the Regional Director for Region 9, after being signed by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, Respondent has gone out of business, been purchased, or closed the facility involved in these proceedings, Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current and former employees employed by Respondent since February 1997.

(c) File with the Regional Director a sworn

certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

IT IS FURTHER ORDERED that the election held on April 17, 1997 **IS SET ASIDE,** and that the case **IS REMANDED** to the Regional Director for Region 9 for the purpose of conducting a new election.

Dated, Washington, D.C. July

_____
Jerry M. Hermele
Administrative Law Judge